

**CITY COUNCIL MEETING**  
**October 8, 2009, 8:30 a.m.**

**CITY COUNCIL OF THE CITY OF ABILENE, TEXAS**  
**COUNCIL CHAMBERS, CITY HALL**

The City Council of the City of Abilene, Texas, met in Regular Session on October 8<sup>th</sup>, at 8:30 a.m. in the Council Chambers at 555 Walnut Street. Mayor Archibald was present and presiding with Councilmen Shane Price, Joe Spano, Anthony Williams, Robert O. Briley, Stormy Higgins and Councilwoman Laura Moore. Also present were City Manager Larry Gilley, City Attorney Dan Santee, Assistant City Secretary Tiffni Hererra, and various members of the City staff.

Councilman Stormy Higgins gave the invocation.

Mayor Archibald introduced Jeremiah Taylor; Jeremiah attends Taylor Elementary and is a 5<sup>th</sup> grader. Jeremiah led the Pledge of Allegiance to the Flags of the United States of America and the State of Texas.

**EMPLOYEE SERVICE AWARDS AND RECOGNITIONS**

Mayor Archibald and City Manager Larry Gilley presented the following Service Awards:

<i>Richard Cowart</i>	<i>Supervisor I, Solid Waste Services</i>	<i>20 years</i>
<i>John Faulkner</i>	<i>Maintenance Crew Chief, Solid Waste Services</i>	<i>30 years</i>

**PRESENTATIONS**

Susan Gerred, Recreation Supervisor, made a presentation to the TAAF Region 8 Female Athlete of the Year Winner, Lauren Fairchild. Lauren is 11 years old and attends Wylie Jr. High.

Paul Washburn of Rescue the Animals presented the "Animal Hero Award" to the Animal Services Division.

**PROCLAMATIONS**

Mayor Archibald presented the following proclamations:

**October 2009**

**National Physical Therapy Month**

Marsha Rutland, Hardin Simmons University, accepted the Proclamation

**October 25, 2009**

**Pink Ribbon Sunday**

Marion Smith, Texas Oncology, accepted the Proclamation

### DISPOSITION OF MINUTES

**5.0** Mayor Archibald stated Council has been given the minutes from the Regular Meeting on September 24<sup>th</sup>. There being no deletions, no additions, and no corrections, Councilman Briley made a motion to approve the minutes as presented. Councilman Price seconded the motion, the motion carried.

AYES: Councilmen Price, Spano, Williams, Briley, Higgins, Councilwoman Moore and Mayor Archibald

NAYS: None

### CONSENT AGENDA

Councilwoman Moore made the motion to approve consent items 6.1 through 6.5 as presented. Councilman Williams seconded the motion, the motion carried.

AYES: Councilmen Price, Spano, Williams, Briley, Higgins, Councilwoman Moore and Mayor Archibald

NAYS: None

### Oral Resolutions:

**6.1** Authorized the City Manager to execute a lease for T-Hanger #7 with Abilene Aero

**6.2** Authorized the City Manager to execute an agreement for Library service for the Big Country Library System

### Bid Awards:

**6.3** Bid Award #**CB-9060** – Maxwell Golf Course Irrigation Improvements award to Specialized Earthworks, LLP, Fort Worth, Texas in the amount of \$ 115,250.00

**6.4** Bid Award #**CB-9061** – Bulk chemical supply contracts as listed below:

Liquid Aluminum Sulfate	General Chemical	\$ 213.00/dry ton
Anhydrous Ammonia	DPC Industries Inc	\$1,920.00/liquid ton
Liquid Caustic Soda	FSTI Inc	\$ 327.30/dry ton
Liquid Chlorine	DPC Industries Inc	\$ 629.00/liquid ton
Sodium Bisulfite	Dimmitt Sulfur Products	\$ 413.75/dry ton
Hydrated Lime	Chemical Lime Company	\$ 139.63/dry ton
Fluorosilicic Acid	Pencoco Inc	\$3,259.00/dry ton
Liquid Ammonium Sulfate	Altivia Corporation	\$ 362.50/dry ton
Ferric Sulfate	Kemira Water Solutions	\$ 447.69/dry ton
Sodium Chlorite	International Dioxide Inc	\$3,185.84/dry ton
Ferrous Chloride	Hydro Plus, Inc	\$ 899.00/dry ton
Dry Polyacrylamide Cationic Polymer	SNF Polydyne	\$2,700.00/dry ton

- 6.5 Bid # CB-9059** – Water Department Street and Miscellaneous Repair Work award to Bontke Brothers Constructions Company in the amount of \$489,681.00

### **REGULAR AGENDA**

**7.1** Jon James, Director of Planning briefed the Council on this appealed item on a request from Oscar Gonzales to rezone property from AO (Agricultural Open Space) to MH (Mobile Home) zoning, located at 7809 W. Lake Road. James stated notifications were sent and received no response. The mobile home was placed on the site before they knew it would need to be rezoned. The rationale for the denial from the Planning and Zoning Commission was that mobile homes were not appropriate at Fort Phantom Lake. James stated the staff is in support of denying this request.

Mayor Archibald opened the public hearing and the city council heard from the following citizen:

Roger Huber- President of the Fort Phantom Lake Association read a portion of the Super Neighborhood Plan. Huber stated that the Ft Phantom Lake Association has worked for many years to improve the standards of homes and quality of life at the Lake. Huber stated he appreciated the City Council's support.

Councilman Spano made the motion to uphold Planning and Zoning Commission denial of zone change as presented. Councilwoman Moore seconded the motion, the motion carried.

AYES: Councilmen Price, Spano, Higgins, Williams, Briley, Councilwoman Moore and Mayor Archibald

NAYS: None

**7.2** Jon James, Director of Planning briefed the Council on amending Section **23-319** of the City of Abilene Zoning Ordinance regarding Airport Zoning. This ordinance is meant to protect Dyess Air Force Base from incompatible encroachment without the need to expand the city limits to incorporate the area, as noted in the City's Comprehensive Plan. It will affect areas both inside the City Limits and portions of the extra-territorial jurisdiction (ETJ) in the areas surrounding Abilene Regional Airport and Dyess Air Force Base. The three key issues this ordinance addresses are *noise, height, land use and permitting*. Everyone is in agreement that noise is a non-issue.

The Ordinance no longer deals with the noise regulations around Dyess Air Force Base and the ordinance no longer references the AICUZ chart, it has been simplified and the chart has been incorporated into the City Ordinance.

## **Proposed Changes to Airport Zoning Ordinance**

1. Revise ordinance to explicitly allow an individual home, including manufactured housing, on a lot of 1 acre or larger (permit may still be required) except within the Clear Zone. **Section 319.4.B.5.a**
2. Allow one new home on an existing legally-platted lot, or a lot subdivided prior to 1984, even if less than 1 acre. **Section 319.4.B.5.b**
3. Ensure that ordinance is clear that existing legal development is grandfathered. **Section 319.6.A**
4. Add a provision that allows for replacement of an existing home, even if not otherwise allowed. **Section 319.6.F**
5. Allow for the replacement/restoration of an existing grandfathered business or structure if damaged or destroyed. **Section 319.6.G added.**
6. Exempt from permitting accessory structures, vegetation, fencing, etc. (i.e. everything but primary structures) if less than **50** feet in height, except within the Clear Zone. **Section 319.7.A.1**
7. Exempt single-family homes, including manufactured housing, from noise attenuation requirements where homes are allowed. **Section 319.4.B.7 removed**
8. Remove any reference to the AICUZ and include all regulatory requirements, definitions, and use charts within the City's ordinance. Also, base any land use and noise requirements on static boundaries of the Clear Zone and Accident Potential Zones. **AICUZ references removed throughout; also see Section 319.4.B.5, 6, and 7.**
9. Allow for a citizen committee (appointed by County Commissioners) to review any future changes to the ordinance prior to consideration by P&Z and Council. **Section 319.12**
10. Noise attenuation removed from ordinance altogether (both residential and non-residential development) within the area affected by Dyess AFB. **Section 319.4.B.7 removed**
11. Defining which land uses are permitted and not permitted within each zone, without reference to AICUZ. **see new Table 319.4.B.5.d**

12. Details of permitting process, including which activities require a permit.  
**Section 319.7.** *(see summary below)*

**When is an Airport Zone Development Permit required?**

- A permit is required prior to the construction of any primary structure, including replacement of such a structure.
- A permit is NOT required for the remodeling of a primary structure.
- A permit is NOT required for the expansion of an existing single-family home.
- A permit is required for the expansion of a primary structure other than a single-family home.
- A permit is NOT required for construction or installation of an accessory structure, natural growth, or other obstruction that is less than 50 feet in height.
- A permit is required for construction or installation of an accessory structure, natural growth, or other obstruction that is greater than or equal to 50 feet in height. *Permit can be issued for a site with recurring activity.*
- A permit is required for any change in the use of a property that would trigger the need for a Certificate of Occupancy if within the city limits.

**Table 23-319.4.B.5  
Dyess Air Force Base  
Land Use Restrictions**

Land Use	Clear Zone	APZ I	APZ II
Agricultural	Yes	Yes	Yes
Residential > 1 acre	No	Yes	Yes
Residential < 1 acre	No	No <sup>1</sup>	No <sup>1</sup>
Govt, Health, Safety, and Welfare	No	No	No
Educational & Religious	No	No	No
Office	No	No	Yes <sup>2,5</sup>
Trade – Retail	No	No	Yes <sup>2</sup>
Services (other than office type) Type 1	No	No	Yes <sup>2</sup>
Services (other than office type) Type 2	No	Yes <sup>4,5</sup>	Yes
Heavy Commercial	No	Yes <sup>3,5</sup>	Yes
Manufacturing	No	Yes <sup>4,5</sup>	Yes <sup>4</sup>
Wholesale	No	Yes <sup>5</sup>	Yes
Transportation, Communication, and Utilities	No	Yes <sup>5,6</sup>	Yes <sup>6</sup>
Resource Production/Extraction	No	Yes <sup>5</sup>	Yes
Cultural	No	No	No
Entertainment	No	No	No
Recreational	No	Yes <sup>7</sup>	Yes <sup>7</sup>

<sup>1</sup>Existing lots of less than 1 acre that were legally platted, or that were subdivided prior to 1984, are allowed one residence

<sup>2</sup>No individual building greater than 5,000 square feet

<sup>3</sup>Non-retail

<sup>4</sup>Except chemical, precision equipment, or other hazardous or noise/vibration-sensitive uses

<sup>5</sup>Low intensity uses only: 10 or fewer employees on site at any time

<sup>6</sup>No passenger terminals and no major above ground transmission lines

<sup>7</sup>No clubhouse facility and no areas for gatherings of people

Type 1 Services include all other uses not included in Type 2 Services.

Type 2 Services include: Cabinet Making; Carpentry and Wood Flooring Services; Drilling-Rig Repair (sand and water blasting); Electrical Motor Repair; Exterminating and Fumigating Services; Heating, Ventilation, Air Conditioning Services; House Wrecking and Demolition; Landscaping Services; Machine Shops; Masonry, Stonework, Tile Setting, and Plastering Services; Oil Field Service; Oil Well Drilling Contractors; Pipe Cleaning and Testing (sand and water blasting); Plumbing Services; Refrigerated Warehousing; Roofing and Sheet Metal Services; Scales; Storage and Warehousing (general); Water Well Drilling Services; Welding Service; and other similar uses.

In addition to the above listed restrictions, no use shall have hazardous materials stored on site other than minimal, incidental storage of small quantities

## **Summary of Outstanding Issues**

1. Allow expansion on the site of an existing grandfathered business?

**Question:** Should businesses that are considered incompatible by the Dyess AICUZ report be allowed to expand into the Accident Potential Zones?

**Current Ordinance:** Existing nonconforming businesses can remain, but may not expand.

**Staff Proposal:** No change

**P&Z Proposal:** Allow nonconforming industrial uses to expand to the boundaries of their existing property. *Also, allow industrial uses in APZ 1 with no limitations on employees or building size.*

2. Allow a property owner to create a legal platted lot, with grandfathered rights, from a tract that was illegally subdivided in the past.

**Question:** Should a substandard parcel of land that was created in violation of the City's Subdivision Ordinance and the Texas Local Government Code be allowed to plat and gain legal status without complying with ordinance requirements?

**Current Ordinance:** Not allowed

**Staff Proposal:** No change

**P&Z Proposal:** No change

3. Do not require a permit for the replacement of a primary structure.

**Question:** Should a new building that is replacing an existing building require an Airport Zone Development Permit?

**Current Ordinance:** Permit required

**Staff Proposal:** No change, permit is necessary to track development in the area and to ensure compliance

**P&Z Proposal:** No change (but eliminate permit fee)

4. Raise the threshold for requiring a permit?

**Question:** Above what height should a permit be required?

**Current Ordinance:** Permit required for any new development or construction

**Staff Proposal:** Exemption from height permit for anything less than 50' in height.

**P&Z Proposal:** Exemption from height permits for anything less than 50' in height in the Clear Zone or APZ 1 and less than 150' in the APZ 2 or beyond.  
After additional analysis of slopes and ground elevations, staff recommends 100' in APZ 2 and 150' beyond...

5. Allow office, retail, and service uses in APZ 1 with the following limitations: building limit of 5,000 sf and no more than 10 employees per site.

**Question:** What uses should be allowed in APZ 1 and APZ 2?

**Current Ordinance:** Reference to AICUZ, which precludes most office, retail, and service uses, with exceptions for those that are low-intensity.

**Staff Proposal:** No office or retail allowed in APZ 1.

Service uses are separated into two types:

Higher intensity service uses (Type 1) are not allowed

Low intensity service uses (Type 2) are allowed with employee limit.

Office, retail, and services are allowed in APZ 2 with employee limit and building size limit (10 employees and 5,000 sf building)

**P&Z Proposal:** Same as staff, but without limitations on building size or employees.

6. Eliminate Permit Fee?

**Question:** Should the permit fee for an Airport Zone Development Permit be eliminated?

**Current Permit Fee:** \$100

**Staff Proposal:** \$50

**P&Z Proposal:** No fee

Mayor Archibald opened the public hearing and the city council heard from the following citizens:

▪Tommy Downing, Dyess AFB Community Planner

Provided a handout of information for the Council's review; stated that Dyess AFB is not overly encroached upon and that with the opportunity for zoning and as the area develops that it is most important that compatible land use occurs.

▪Dwight Williams, Dyess AFB Aerospace Manager

Thanked the City Staff and Council for bringing this matter to their attention; handles vertical development around Dyess; still have issues with height limitations to the south of the runway, but otherwise is in agreement with proposed changes.

▪Butch Cockrell- Chief Financial Officer, Smith Pipe Company

Cockrell stated that the regulations imposed are not needed and that the only ones that are needed are navigational, radio, and height restrictions; also stated that this ordinance is hindering the growth of their business and Cockrell is opposed to this ordinance.

▪Mike McMahon- President of the Abilene Chamber of Commerce

Is of the opinion that this ordinance is important for the future missions that could be designed for Dyess AFB, and the decisions being made now will affect the decisions made in the future concerning potential encroachment. McMahon stated he appreciated the work of City Staff and Council

▪Gayle Potter – land owner

Gayle Potter stated that he owns about one mile of property along FM 707. Potter stated that he would like to develop the land he owns along this highway for commercial uses. Potter is opposed to this ordinance.

▪Tom LeVieux – Citizen's Action Committee, land owner

Member of the Citizen's Action Committee; LeVieux does not agree with the land use restrictions; stated if the ordinance is not going away, he is in agreement with the Planning and Zoning recommendations.

▪Winston Olhausen – land owner

Olhausen stated this issue is about the safety of Dyess never being closed down; asked the Council to reconsider their decision and is opposed to this ordinance.



▪Chance Ferguson – land owner

Ferguson had questions concerning the Land Use Restrictions Chart; would like some issues cleared up before a decision is made.

▪Randahl Lohse – land owner

Lohse had questions concerning the Land Use Restrictions Chart; he stated this ordinance has caused major impacts to citizens and more attempts for notifications should be done.

▪Mike Craft – Citizen's Action Committee member, land owner

Craft stated that the Committee was pleased with the conclusions that had been presented to Council for approval; stated he was in favor of a resolution to this issue.

▪Randy Williams – Taylor County Commissioner

Stated that elected officials should make sure that when decisions are made, they are made with the community as opposed to imposing onto the community; expressed his appreciation to the Committee and City Staff.

▪Jerry Walls – land owner, pilot

Discussed issues related to the height restrictions; does not agree with the City telling citizens what to do with their property; Walls is opposed to this ordinance, but was in agreement that the height restrictions recommended by the Planning and Zoning Commission be accepted.

After discussion by the City Council and staff the following motions were made and passed as it relates to the Airport Zoning Ordinance.

Motion made by Mayor Archibald to approve **Amendment #1**: To allow nonconforming grandfathered industrial uses to expand to the boundaries of their existing property. Also, allow industrial uses in APZ I with no limitations on employees or building size. Subject to special exception for new industrial uses in APZ I for review by the Board of Adjustment with a recommendation by the Airport Development Board and/or Dyess AFB. Councilman Williams seconded the motion, motion carried.

AYES: Mayor Archibald, Councilmen Price, Spano, Williams, Briley, Higgins and Councilwoman Moore

NAYS: None

Motion made Mayor Archibald to approve **Amendment #2**: That will not allow a property owner to create a legal platted lot, with grandfathered rights, from a tract that was illegally subdivided in the past. Councilman Briley seconded the motion, motion carried.

AYES: Mayor Archibald, Councilmen Price, Spano, Williams, Briley, Higgins, and Councilman Moore.

NAYS: None

Motion made by Mayor Archibald to approve **Amendment #3**: Would require a permit for the replacement of a primary structure, but with no permit fee. Councilman Williams seconded the motion, motion carried.

AYES: Mayor Archibald, Councilmen Price, Spano, Williams, Briley, Higgins and Councilwoman Moore.

NAYS: None

Motion made by Mayor Archibald to approve **Amendment #4**: Threshold for requiring a permit: Exemption from height permit for anything less than 50' in height in the Clear Zone and APZ I, less than 100' in APZ II and 150' beyond APZ II. Councilman Spano seconded the motion, motion carried.

AYES: Mayor Archibald, Councilmen Price, Spano, Williams, Briley, Higgins and Councilwoman Moore

NAYS: None

Motion made by Mayor Archibald to approve **Amendment # 5**: What uses should be allowed in APZ 1 and APZ II. No office or retail allowed in APZ 1. Service uses are separated into two types: Higher intensity service uses (Type 1) are not allowed; Low intensity service uses (Type 2) are allowed without limitations on building size or employees. (Reference Table 23-319.4.B.5)

Made by special exception for appeal to the Board of Adjustment with recommendation by Dyess AFB. Councilman Williams seconded the motion, motion carried.

AYES: Mayor Archibald, Councilmen Price, Spano, Williams, Briley, Higgins and Councilwoman Moore

NAYS: None

Motion made by Mayor Archibald to approve **Amendment # 6**: Eliminate Permit Fee, Councilman Briley seconded motion, motion carried.

AYES: Mayor Archibald, Councilmen Price, Spano, Williams, Briley, and Councilwoman Moore.

NAYS: Councilman Higgins

Motion made by Mayor Archibald to approve item 7.2, an Ordinance amending Section 23-319 of the City of Abilene Zoning Ordinance regarding Airport Zoning with six amendments, second by Councilman Williams, motion carried.

AYES: Mayor Archibald, Councilmen Price, Spano, Williams, Briley, and Councilwoman Moore.

NAYS: None

Ordinance **#33-2009** and captioned as follows:

AN ORDINANCE AMENDING CHAPTER 23, "PLANNING AND COMMUNITY DEVELOPMENT," SUBPART E, "ZONING," OF THE ABILENE MUNICIPAL CODE, BY

AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY  
CLAUSE; DECLARING A PENALTY AND CALLING A PUBLIC HEARING  
**SECTION 23-319/AIRPORT ZONING**

**EXECUTIVE SESSION**

Mayor Archibald recessed the Council into Executive Session at 12:20 p.m. pursuant to Sections 551.071, 551.074, 551.072 and 551.087 of the Open Meetings Act, to seek the advice of the City Attorney with respect to pending and contemplated litigation, to consider the appointment and evaluation of public officers, to consider the purchase, exchange, lease or value of real property, and to discuss contemplated business prospects and or economic development matters.

The Council reconvened from Executive Session at 1:25 p.m. and reported no votes or action was taken in Executive Session in regards to Section 551.071 Consultation with the City Attorney and Section 551.074 Personnel Matters. Councilman Williams left following the executive session.

- 10.** Oral Resolution for the appointments to the following Board and Commissions:

*Mayor's Council on Physical Fitness*

No action was taken.

- 11.** **Resolution** – Nominating individuals to the Board of Directors of the Central Appraisal District of Taylor County for 2010-2011

Resolution **#31-2009** and captioned as follows:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, NOMINATING INDIVIDUALS TO THE BOARD OF DIRECTORS OF THE CENTRAL APPRAISAL DISTRICT OF TAYLOR COUNTY FOR 2010-2011

Councilman Williams made the motion to approve the Resolution as presented nominating the following individuals to the Central Appraisal District Board:

Yvonne Batts, David Copeland, Cecil Davis, and Dr. Colleen Durrington

Councilman Price seconded the motion, the motion carried.

AYES: Councilmen Price, Spano, Briley, Higgins, Councilwoman Moore, and Mayor Archibald

NAYS: None

- 12.** Discussion and possible action related to annual performance evaluations of the City Manager and the Municipal Judge was tabled.

There being no further business the meeting was adjourned at 1:30 p.m.

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Danette Dunlap, TRMC  
City Secretary

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Norm Archibald  
Mayor